

**CIVIL SERVICE COMMISSION MINUTES**

**JANUARY 21, 2004**

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman  
Sigrid Pate  
Marc Sandstrom  
Gordon Austin  
A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**Approved**  
**Civil Service Commission**

**February 4, 2004**

**CIVIL SERVICE COMMISSION MINUTES  
JANUARY 21, 2004**

1:30 p.m.      CLOSED SESSION:    Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 302/303, 1600 Pacific Highway, San Diego, California 92101

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<u>Discussion Items</u> <u>1,9,10,11,12,13,16,17</u>	<u>Continued</u> <u>14</u>	<u>Referred</u>	<u>Withdrawn</u>
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COMMENTS: Motion by Pate to approve all items not held for discussion; seconded by Casillas. Carried.

<b>AYES:</b>	<b>Newman, Pate, Sandstrom, Casillas</b>
<b>NOES:</b>	<b>None</b>
<b>ABSTENTIONS:</b>	<b>Austin</b>
<b>ABSENT:</b>	<b>None</b>

**CLOSED SESSION AGENDA  
County Administration Center, Room 458  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the Public may be present at this  
location to hear the announcement of the  
Closed Session Agenda**

A. Commissioner Pate: Rena Wallenius, Esq., on behalf of **Jacqueline Langston**, former Recreation Therapy Aide, appealing an Order of Termination and Charges from the Health and Human Services Agency (HHSa).

B. Commissioner Pate: Wendell Prude, SEIU Local 2028, on behalf of **Annie Brown**, former Intermediate Clerk Typist, appealing a Final Order of Removal and Charges from the HHSa.

C. Commissioner Newman: **Guy Munshower**, Building Inspector II, appealing an Order of Suspension and Charges from the Department of Planning and Land Use.

**REGULAR AGENDA  
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

**ELECTIONS**

1. Election of President and Vice-President of the Civil Service Commission for 2004.

Motion by Casillas to nominate Pate as President; seconded by Austin. Carried.

AYES: Newman, Pate, Austin, Casillas  
NOES: None  
ABSTENTIONS: Sandstrom  
ABSENT: None

Motion by Austin to nominate Sandstrom as Vice-President; seconded by Casillas. Unanimously Carried.

## MINUTES

2. Approval of the Minutes of the regular meeting of December 17, 2003.

Commissioner Sandstrom requested that the vote on page 2 of the Minutes re Item No. 6 reflect that he favored removal of the appellant from his class and position. Minutes approved as amended.

## CONFIRMATION OF ASSIGNMENTS

3. Commissioner Sandstrom: **Patricia Peel**, Administrative Secretary I, appealing an Order of Suspension and Charges from the HHSA.

**Confirmed.**

4. Commissioner Newman: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Marjorie Bramwell**, Public Health Nurse II, appealing a Final Order of Suspension and Charges from the HHSA.

**Confirmed.**

5. Commissioner Casillas: **Gail Dunford**, Detention Processing Technician, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Confirmed.**

6. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **2004-01\***, Deputy Sheriff-Detentions/Courts, appealing an Order of Termination and Charges from the Sheriff's Department.

**Confirmed.**

7. Commissioner Sandstrom: Everett Bobbitt, Esq., on behalf of **2004-02\***, Deputy Sheriff-Detentions/Courts, appealing an Order of Termination and Charges from the Sheriff's Department.

**Confirmed.**

## REASSIGNMENTS

8. Commissioner Austin: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Mario Nava**, Park Maintenance Worker, appealing an Order of Suspension and Charges from the Department of Parks and Recreation. Commissioner Pate was originally assigned.

**Confirmed.**

## DISCIPLINES

### Findings

9. Commissioner Pate: Rena Wallenius, Esq., on behalf of **Jacqueline Langston**, former Recreation Therapy Aide, appealing an Order of Termination and Charges from the HHSA.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Inefficiency (absences without authorized leave); Cause II - Absent without authorized leave; Cause III - Dishonesty (asked a coworker to complete an in-service quiz on her behalf); Cause IV - Insubordination; and Cause V - Failure of good behavior. Appellant had an extended history of absenteeism for various alleged reasons. The Agency provided Appellant with numerous opportunities to decrease her absenteeism by giving her performance improvement plans, counseling and progressive discipline. Though it appeared that some of her recent absences may have been related to recent tragic family events, several absences appeared unrelated to those events and provided a sufficient basis to uphold her termination from Agency employment. The Department proved all of the charges contained in the Order of Termination and Charges. Employee is guilty of Causes I, II, III, IV and V. It is therefore recommended that the Order of Termination and Charges be affirmed; that the Commission read and file this Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Pate to approve Findings and Recommendations; seconded by Austin. Carried.**

10. Commissioner Pate: Wendell Prude, SEIU Local 2028, on behalf of **Annie Brown**, former Intermediate Clerk Typist, appealing a Final Order of Removal and Charges from the HHSA.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Violence and Threats in the Workplace (physical altercation with co-worker); Cause II - Profanity; Cause III - Conduct unbecoming an employee; Cause IV - Failure of Good Behavior; and Cause V - Acts incompatible with public service. While normally Employee's exemplary performance and attendance record would provide sufficient cause to mitigate the discipline shy of termination, her conduct in this one incident was so violent and dangerous, it warrants termination under the County's zero tolerance policy regarding threats and violence in the workplace. The Department proved all of the charges contained in the Final Order of Removal and Charges. Employee is guilty of Causes I, II, III, IV and V. It is therefore recommended that the Final Order of Removal and Charges be affirmed; that the Commission read and file this Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Pate to approve Findings and Recommendations; seconded by Casillas. Carried.**

11. Commissioner Newman: **Guy Munshower**, Building Inspector II, appealing an Order of Suspension and Charges from the Department of Planning and Land Use.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency; and Cause II - Inefficiency. The hearing was duly noticed and came on for hearing on December 17, 2003.

The Appellant did not appear for the hearing in person or through a designated representative. The Commission determined that the Appellant abandoned his appeal. It is therefore recommended that the Order of Suspension suspending Appellant for ten (10) working days be affirmed; that the Commission read and file this Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations; seconded by Sandstrom. Carried.**

Commissioner Austin asked if the level of discipline could be increased due to Mr. Munshower's non-communication with the Commission. Commissioner Newman took the matter under submission and requested that the above Motion and Second be tabled until he could reconsider the level of discipline. Sandra Boyer, representing the Department, requested that the Commission conclude this matter with the recommendation stated in the Findings and Recommendations. In light of this request, the Motion to approve the above Findings and Recommendations was voted upon and carried.

## **DISCRIMINATION**

### **Findings**

12. Commissioner Sandstrom: **Stacie Neldaughter**, Deputy Public Administrator-Guardian II, HHSA, alleging disability and retaliation discrimination by the HHSA.

### **FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission on October 22, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of discrimination based on disability and retaliation and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with the appended OIA Final Investigative Report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Commissioner Sandstrom stated that in reviewing the report from OIA, it appears that the Agency went to extreme measures to be sensitive to Ms. Neldaughter's condition, and to find appropriate accommodations for her. He commended the Agency and added that hopefully accommodations can be found, which will require the cooperation of Ms. Neldaughter.

**Motion by Sandstrom to approve Findings and Recommendations; seconded by Casillas. Carried.**

13. Commissioner Casillas: Stephine M. Wells, Esq. on behalf of **Sue Tiu**, Child Support Officer, Department of Child Support Services (DCSS), alleging discrimination based on race, national origin and disability, as well as retaliation and harassment by the Department of Human Resources (DHR) and the DCSS. (See No. 14 below.)

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on August 20, 2003, the Commission appointed A. Y. Casillas to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of discrimination based on race, national origin and disability, as well as retaliation and harassment, and that probable cause that a violation of discrimination laws occurred was not established in this matter. Complainant also raised issues regarding having been placed on Compulsory leave. It is therefore recommended that this complaint be denied; that Ms. Tiu's Compulsory Leave appeal be continued to the Commission's next meeting; that the Commission approve and file this report with the appended OIA Final Investigative Report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations; seconded by Austin. Carried.**

#### COMPULSORY LEAVE

##### Appeals

14. Stephine M. Wells, Esq. on behalf of **Sue Tiu**, Child Support Officer, appealing Ms. Tiu placement on Compulsory Leave by the DCSS. (Held in abeyance pending the outcome of Ms. Tiu's discrimination investigation. See No. 13 above.)

RECOMMENDATION: Continue to the next Commission meeting.

**Continued.**

#### SELECTION PROCESS

##### Findings

15. **Kathy V. Degoyler**, appealing the removal of her name by the DHR from the employment list for Deputy Sheriff-Detentions/Courts.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item No. 15 ratified.**

## **INVESTIGATIONS**

### **Requests**

16. **Martin Brauer, Antonio Loo and John Peterson**, Facilities Technicians, HHSA, requesting a Rule XI investigation into their allegations of an ongoing pay inequity in their classification as compared to the Building Maintenance Engineer class. Also, requesting a Rule XI investigation into the personnel practices of the DHR and the HHSA related to their handling of Messrs. Brauer, Loo and Peterson's request to remedy the alleged pay inequity. (Continued from the Commission's meeting of December 17, 2003.)

RECOMMENDATION: Deny Request.

Prior to the parties addressing the Commission, President Newman requested that Larry Cook, Executive Officer, explain Staff's recommendation above. He explained that the CSC may have involvement with classification, but does not have authority over compensation issues. Staff does not believe that an investigation under Rule XI has merit. Therefore it is recommended that employees' request for a Rule XI be denied.

John Peterson, one of the employees requesting an investigation, addressed the Commission. He gave a brief overview of the actions that have taken place since 2002 regarding the above matters. Dennis Floyd, Deputy County Counsel, spoke briefly and said that he concurs with the comments of Executive Officer.

Wendell Prude, SEIU Local 2028, stated that the Union is the sole representative of employees and that they should have come to the Union. Mr. Prude offered that he has dealt with this same issue many times and very often these issues have been resolved in favor of the employee.

Carlos Arauz, Director DHR, reiterated that the Union is the sole bargaining representative, and that Messrs. Brauer, Loo and Peterson are represented by Local 2028. Commissioner Sandstrom asked Mr. Arauz if back pay could be given to the employees, retroactive to March 2001. Mr. Arauz explained that pursuant to the Compensation Ordinance DHR is unable to retroactively increase salaries, however, he would look into the matter.

**Motion by Sandstrom to approve Staff Recommendation; seconded by Austin. Carried.**

## **OTHER MATTERS**

### **Extension of Temporary Appointments**

17. Department of Agriculture Weights & Measures

1 Insect Detection Specialist I (Benjamin Clarke)

RECOMMENDATION: Ratify.

**Commissioner Newman expressed that on behalf of the Commission, he will continue to monitor the Extension of Temporary Appointments.**

**Item No. 17 ratified.**

18. Public Input.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE FEBRUARY 4, 2004.**

\* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).